IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.858 OF 1996

Maharashtra State Road Transport
Corporation, having its office at
Maharashtra Vahatuk Bhavan,
Bombay 400 008. .... Appellant.
(Org.Opponent No.2.)

Versus.

1. Smt.Rakhmabai Bhagwan Vavale.
2. Kum.Ujwala Bhagwan Vavale.
3. Kum.Pinki Bhagwan Vavale.
4. Master Dnyaneshwar Bhagwan Vavale.
5. Kum.Baby Bhagwan Vavale,
Nos.2 to 5 minors by G.A.L.
natural mother No.1 above.
6. Mr.Moru Narsu Vavale.
7. Sou.Sitabai Moru Vavale. ... Respondents.
(Original Applicants)

Shri G.S.Hegde with Shri S.Lokesh for the Appellant.

Shri Rajesh A.More for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2004.

ORAL JUDGMENT.

1. The Maharashtra State Road Transport Corporation by preferring this Appeal has taken exception to the Judgment and Award dated 31st January 1996 passed by the learned Member of the Motor Accident Claims Tribunal,

Pune. The Respondents are the original Applicants in a Claim Petition filed under the Motor Vehicles Act, 1939. The husband of Respondent No.1 died in an accident which took place on 26th October 1987.

2. The claim of the Respondents is that the deceased was driving an autorickshaw and was proceeding from Yervada to his residence. The allegation is that when he was proceeding in a normal speed and was about to take a turn, the bus belonging to the Appellant ST Corporation came from the opposite direction in an excessive speed and the said bus gave a dash to the autorickshaw. As a result of the dash given by the bus, the deceased died on the spot.

3. The claim was contested by the Appellant Corporation by filing a written statement. The case of the Appellant is that the deceased who was driving the autorickshaw abruptly came to his wrong side and gave a dash to the ST bus while he was attempting to take a turn. It was stated that the Driver of the ST Bus was driving the bus at a reasonable speed and there was no negligence on his part.

4. The leaned Member of the Tribunal allowed the claim application and awarded compensation of Rs.2 lakhs. The

learned Member of the Tribunal relied upon the spot panchanama and came to the conclusion that the Driver of the ST bus was negligent. The learned Member also considered the fact that the Driver of the bus was not examined by the Appellant.

5. The learned Counsel appearing for the Appellant-Corporation submitted that in the absence of any formal proof of panchanama by examining the witness, the same could not have been read in evidence. He submitted that even the panchanama shows that the spot of accident is 7 ft. away from the southern side of the road. He submitted that even if the panchanama is read as it is, it is apparent that the deceased who was driving the autorickshaw has contributed to the accident. He submitted that the multiplicand of 16 applied by the Tribunal is extremely on higher side. The learned Counsel for the Appellant submitted that the Respondent No.1 admitted in evidence that the deceased was giving to her Rs.1000/- per month. He submitted that out of the said amount of Rs.1000/- the Respondent No.1 must be utilising some amount for the deceased also and therefore, for calculating the multiplicand income of Rs.1000/- p.m. should not have been taken as the basis. He submitted that considering the recent judgment of the Apex Court the interest at the rate of

9% per annum ought to have been awarded.

6. The learned Counsel appearing for the Respondents submitted that as Driver of the ST Bus has not entered the witness box, the case of the Respondents as regards the negligence has been accepted by the Tribunal. He submitted that the income of the deceased which he was receiving from his employer was Rs.2200/- per month. He was also plying autorickshaw after his duty hours and was deriving some income. He therefore submitted that the income of Rs.1000/- taken by the Tribunal for calculating the multiplicand is on the lower side. He submitted that as sufficient funds were not available with the Respondent, appeal for enhancement of compensation could not be filed.

7. I have considered the rival submissions. In so far as the first contention is concerned, I find that the certified copy of the panchanama is produced along with list at Exh.6 by the Respondent-claimant. There is an endorsement made by the Advocate appearing for the Appellant below the said list to the effect that "all documents may be read in evidence except No.1". The document at Sr.No.1 is the certified copy of the F.I.R. The certified copy of the panchanam is at Sr.No.2 in the said list. It is therefore apparent that the

Appellant-Corporation consented for reading the certified copy of the spot panchanama in evidence. It is well settled that the strict rules of evidence incorporated in the Indian Evidence Act, 1872 are not applicable to the Tribunal constituted under the Motor Vehicles Act, 1939. Therefore, no fault can be found with the learned Member if he read the certified copy of spot panchanama in evidence.

8. Admittedly none of the claimants were eye witnesses to the accident. The manner in which the accident took place was within the special knowledge of the Driver of the Bus owned by the Appellant-Corporation. No attempt was made by the Appellant-Corporation to examine the said Driver. It is not the case of the Appellant-Corporation that the driver was not available for adducing evidence. Considering the manner in which the accident took place, it was necessary for the Appellant-Corporation to examine the Driver. The Tribunal was therefore right when adverse inference was drawn against the Appellant for not examining the driver.

9. The Tribunal has referred to the contents of spot panchanama and came to the conclusion that the Driver of the ST Bus was negligent. In the panchanama it was

recorded that the spot of accident was 7 ft. away from the southern side of the road and the dead body of the deceased was lying 50 ft. away from the spot of accident and the autorickshaw was found in a ditch at a distamce of 60 ft. from the spot. Moreover it is mentioned in the Panchanama that the blood was detected on the front side wheel of the ST bus. Considering all these factors, the Tribunal held that the negligence was only on the part of the Driver of the ST Bus. As stated earlier no explanation is forthcoming from the Appellant as to why the Driver was not examined. Therefore, there is no error in the finding recorded by the Tribunal that the accident took place due to the negligence on the part of the Driver of the ST Bus.

10. This takes me to the quantum of compensation awarded by the Tribunal. Alongwith list Exh.6 at item No.5 a zerox copy of the salary slip of the deceased was produced. As the consent was given by the Appellant to read the documents from Sr.No.2 to 6 in evidence, the said certificate was also admitted in evidence at Exhibit 30. The said certificate is issued by Wandleside National Conductors Ltd. which shows that till his death, the gross salary of the deceased was Rs.2247.96 and after deductions it was Rs.2099.08. It is no doubt true that the Respondent No.1 stated in her

evidence that her husband used to pay her Rs.1000/- per month. It is the case of the Respondent that apart from the employment with the said company, the deceased was driving autorickshaw. Even if his income received from the autorickshaw is not considered on the date of death the income of the deceased will have to be taken as Rs.2000/-. Even 1/3rd amount is deducted for personal expenditure, the income for calculating multiplicand ought to have been taken atleast at Rs.1200/-. The Tribunal has not taken into account the future prospects of increase in the salary of the deceased. Therefore, even if multiplicand of 16 may be on the higher side, the income of the deceased at the time of death is taken at minimum amount of Rs.2000/-. Even a reasonable allowance is made for future increase in income after applying multiplier of 12, the compensation cannot be less than Rs.2 lakhs. The Tribunal instead of granting conventional amount of Rs.15,000/- has awarded only Rs.8,000/-. Therefore, the compensation which is awarded by the Tribunal is in fact on the lower side if evidence on record is considered. Therefore, no fault can be found with the impugned Judgment and Award.

11. The claim petition was allowed in the year 1996. The interest of 12% is awarded in the year 1996. Reliance cannot be placed on recent Judgments of the

Apex Court for coming to the conclusion that rate of interest is on the higher side. In the recent Judgments of the Apex court rate of interest at 9% per annum is awarded considering the recent decline in the rates of interest. As stated earlier, the compensation awarded by the Tribunal is on the lower side. Considering all these circumstances no interference is called for in so far as the rate of interest is concerned.

12. There is no merit in the First Appeal. The same is dismissed with no order as to costs.

13. Certified copy expedited.

Judge.